

IN THE MATTER OF:

SETTLEMENT AGREEMENT

North Hollywood Operable Unit,
San Fernando Valley (Area 1)
Superfund Site
Los Angeles, California

Lockheed Martin Corporation,

Respondent.

U.S. EPA Region IX
CERCLA Docket No. 2018-13
PROCEEDING UNDER
SECTION 104, 107 and 122
OF CERCLA 42 U.S.C. § 9604,
§ 9607 and § 9622

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR RECOVERY OF RESPONSE COSTS

TABLE OF CONTENTS

I.	JURISDICTION AND GENERAL PROVISIONS	1
II.	DEFINITIONS	1
III.	FINDINGS OF FACT	4
IV.	CONCLUSIONS OF LAW AND DETERMINATIONS	7
V.	PARTIES BOUND	7
VI.	PAYMENT OF RESPONSE COSTS	7
VII.	DISPUTE RESOLUTION.....	10
VIII.	FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT.....	11
IX.	COVENANTS BY EPA	12
X.	RESERVATIONS OF RIGHTS BY EPA.....	12
XI.	COVENANTS BY RESPONDENT.....	12
XII.	EFFECT OF SETTLEMENT/CONTRIBUTION	14
XIII.	RETENTION OF RECORDS	16
XIV.	NOTICES AND SUBMISSIONS	17
XV.	INTEGRATION/APPENDICES	18
XVI.	EFFECTIVE DATE.....	19

I. JURISDICTION AND GENERAL PROVISIONS

1. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607, and 9622 (“CERCLA”). This authority was delegated to the EPA Administrator on January 23, 1987 by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Jan. 18, 2017) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, Jan. 18, 2017). These authorities were further redelegated by the Regional Administrator of EPA Region IX to the Superfund Branch Chief, now called Assistant Director, by Regional Delegations R9-1290.15 and R9-1290.20 (both dated September 29, 1997). The Regional redelegations remain consistent with the updated national redelegations.

2. This Settlement Agreement is made and entered into by EPA and Lockheed Martin Corporation (“Respondent”). Respondent consents to and will not contest EPA’s authority to enter into this Settlement Agreement or to implement or enforce its terms.

3. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability by Respondent. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

II. DEFINITIONS

4. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or its appendices, the following definitions shall apply:

“Affected Property” shall mean all real property at the Site where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site.

“BOU Treatment Plant” shall mean the water treatment plant, located at 3200 W. Monterey Avenue, Burbank, California, which is owned by the City of Burbank and was constructed pursuant to the Consent Decrees implementing the first interim remedy for the Burbank Operable Unit of the San Fernando Valley Area 1 Superfund Site.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Eastern NHOU Wells” shall mean extraction wells NHE-7 and NHE-8, initially constructed pursuant to the 1987 NHOU Record of Decision and incorporated into the NHOU2IR, and the new wells planned for installation in the vicinity of NHE-7 and NHE-8 pursuant to the 2018 NHOU ESD.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XVII.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“2018 NHOU Explanation of Significant Differences” or “2018 NHOU ESD” shall mean the Explanation of Significant Differences to the 2009 Interim Action Record of Decision signed by EPA Region IX on February 27, 2018.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Pt. 300, and any amendments thereto.

“NHOU2IR” shall mean the second interim remedy for the North Hollywood Operable Unit of the San Fernando Valley (Area 1) Superfund Site selected in the September 30, 2009 Interim Action Record of Decision and modified by the January 10, 2014 Amendment to the 2009 Interim Action Record of Decision, the June 20, 2016 Memorandum to File, and the February 27, 2018 Explanation of Significant Differences to the 2009 Interim Action Record of Decision.

“NHOU Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Order” shall mean the Unilateral Administrative Order for Remedial Action, U.S. EPA Region IX CERCLA Docket No. 2018-12, issued by EPA on June 8, 2018. The

requirements imposed upon Respondent by the Order include the obligation to (1) design the Eastern NHOU Wells and the piping infrastructure necessary to convey extracted water to the BOU Treatment Plant; (2) construct the Eastern NHOU Wells and the piping infrastructure necessary to convey extracted water to the BOU Treatment Plant; (3) treat all water extracted at the Eastern NHOU Wells to meet the applicable or relevant and appropriate requirements for the NHOU2IR as well as any off-site requirements necessary for the end use ultimately selected by EPA; (4) provide an end use for all water extracted at the Eastern NHOU Wells.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower-case letter.

“Parties” shall mean EPA and Respondent.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Respondent” shall mean Lockheed Martin Corporation.

“Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in developing this Settlement Agreement or the Order; in reviewing or developing deliverables submitted pursuant to this Settlement Agreement or the Order; in overseeing implementation of the Work required by the Order; or in otherwise implementing, overseeing, or enforcing this Settlement Agreement or the Order, including but not limited to, payroll costs, contractor costs, travel costs, or laboratory costs associated with this Settlement Agreement or the Order, the costs incurred pursuant to Section XI of the Order (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions, including, but not limited to, the amount of just compensation), Section XVIII of the Order (Enforcement/Work Takeover), Paragraph 19 of the Order (Emergencies and Releases), Paragraph 31 of the Order (Access to Financial Assurance), Paragraph 20 of the Order (Community Involvement Plan (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), and the costs incurred by the United States in enforcing the terms of this Settlement Agreement and the Order, including all costs incurred in connection with Dispute Resolution pursuant to Section VIII (Dispute Resolution) and all litigation costs.

“2009 Record of Decision” or “2009 ROD” shall mean the EPA Interim Action Record of Decision for the North Hollywood Operable Unit, signed on September 30, 2009 by the Regional Administrator, EPA Region IX, or his/her delegate, all attachments thereto.

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Site” or “NHOU” shall mean the North Hollywood Operable Unit of the San Fernando Valley (Area 1) Superfund Site, which is generally comprised of approximately four-square miles of groundwater contaminated with hazardous substances underlying an area of mixed industrial, commercial, and residential land use in the community of North Hollywood, and includes any areas to which and from which such hazardous substance groundwater contamination migrates.

“State” shall mean the State of California.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

III. FINDINGS OF FACT

5. This Settlement Agreement concerns the North Hollywood Operable Unit of the San Fernando Valley (Area 1) Superfund Site (“Site” or “NHOU”). Based on available information and investigation, EPA has found the following:

a. The Site is an area of contaminated groundwater in the San Fernando Valley Basin (the “Basin”), which lies beneath the San Fernando Valley in Los Angeles County, California. Beginning in the 1940s, the San Fernando Valley was developed for both residential and industrial uses, and was the location of significant aerospace manufacturing activity.

b. The Basin is an important source of drinking water for the Los Angeles metropolitan area. LADWP produces groundwater for public distribution from seven well fields near or within the NHOU. Over the past ten years, groundwater from LADWP well fields located in the Basin, including in the NHOU, has contributed approximately 15 percent of the City of Los Angeles’ municipal water supply.

c. Tests conducted in the early 1980s to determine the presence of certain industrial chemicals in the State’s drinking water revealed extensive contamination from volatile organic compounds (“VOCs”) in the Basin’s groundwater. In 1985, groundwater from twenty-seven of the thirty-five production wells in the NHOU well field exceeded the federal Maximum Contaminant Level (“MCL”) for trichloroethylene (“TCE”), and four wells exceeded the MCL for tetrachloroethylene (“PCE”).

d. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Area 1 site on the National Priorities List, set forth at 40 C.F.R. Pt. 300, Appx. B, by publication in the Federal Register on June 10, 1986, 51 Fed. Reg. 21054.

e. On September 23, 1987, EPA signed a Record of Decision for the remediation of the VOC-contaminated groundwater in the NHOU (“1987 ROD”). The 1987 ROD called for fifteen years of extraction and treatment of VOC-contaminated groundwater in order to contain the VOC plume and remove contaminant mass (the “First Interim Remedy”).

f. The First Interim Remedy was constructed to operate in conjunction with the LADWP North Hollywood municipal water treatment and distribution plant. The First

Interim Remedy was operated by LADWP under a series of cooperative agreements with EPA, and the treated water was delivered to LADWP for use in its municipal water-supply system.

g. In 1996 and 1997, thirty-seven parties entered into consent decrees with the United States, in which they agreed to (1) reimburse the United States for all NHOU past costs and a proportional share of past Basin-wide costs, and (2) pay future costs to operate and maintain the First Interim Remedy for the remainder of its fifteen-year term.

h. Chromium contamination was detected in the Basin for the first time in 1987. EPA began a chromium monitoring program in the early 1990s, and in 1999 EPA began quarterly monitoring for hexavalent chromium (also referred to as chromium (VI)), the predominant form of chromium in the Basin's groundwater.

i. On September 30, 2009, EPA issued the 2009 ROD for the NHOU, selecting a new interim remedy, which includes the construction of new extraction and monitoring wells, chromium (VI) and 1,4-dioxane treatment, expanded VOC treatment, and the continued provision of the treated water to LADWP for use in its municipal water-supply system.

j. On February 14, 2011, EPA, Respondent, and Honeywell International, Inc. entered into an Administrative Settlement Agreement and Order on Consent for Remedial Design, in which Respondent agreed to produce a detailed set of plans for implementation of the remedy selected in the 2009 ROD.

k. On January 10, 2014, EPA amended the 2009 ROD, identifying reinjection of the treated water as an allowable end use. On June 20, 2016, EPA issued a Memorandum to the File, concluding, consistent with the 2009 ROD, that additional extraction wells are needed to protect the North Hollywood West Well Field.

l. In October 2017, as EPA was developing an explanation of significant differences to the 2009 ROD, EPA, Respondent, and the City of Burbank discussed the role that would be played by the City of Burbank in implementing a portion of the NHOU2IR in the event that water extracted from the Eastern NHOU Wells was conveyed to the BOU Treatment Plant. The result of that discussion was an agreement between EPA, Respondent, and the City of Burbank that was memorialized in a December 18, 2017 letter from EPA to Respondent and the City of Burbank, which is included as Appendix C to the Order. Assuming that water extracted from the Eastern NHOU Wells would be conveyed to the BOU Treatment Plant and the City of Burbank would not be the recipient of an administrative order to implement the NHOU2IR, the parties agreed that: (1) the City of Burbank will operate the Eastern NHOU Wells and treat the water extracted from those wells at the BOU Treatment Plant; (2) Respondent and the City of Burbank will arrange for access to any LADWP or City of Los Angeles property necessary for the City of Burbank to operate and maintain the Eastern NHOU Wells; (3) Respondent and the City of Burbank will assign between them responsibility for operation and maintenance of the Eastern NHOU Wells and allocate between them financial responsibility for operation and maintenance of the Eastern NHOU Wells and BOU Treatment System costs; (4) Respondent will ensure that (a) the BOU Treatment Plant has sufficient capacity to accommodate all water from

the Eastern NHOU Wells and the BOU Superfund remedy; (b) the BOU Treatment Plant is capable of treating all contaminants as required by the relevant drinking water permits; and (c) that an end use is provided for all treated and blended water from the BOU Treatment Plant, as well as that received from the Metropolitan Water District; (5) Respondent and the City of Burbank will cooperate in making any necessary revisions to the City of Burbank's drinking water permit; and (6) Respondent and the City of Burbank will finalize all agreements and permits so as to avoid delays in construction or operation of the NHOU2IR.

m. In February 2018, EPA finalized the 2018 NHOU Explanation of Significant Differences, further modifying the NHOU2IR to increase groundwater extraction, expand treatment plant capacity, and transfer some of the extracted groundwater to the BOU Treatment Plant.

n. On June 8, 2018, EPA issued Respondent the Order to design, construct, and operate specific portions of the NHOU2IR, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The Order requires Respondent to (1) design the Eastern NHOU Wells and the piping infrastructure necessary to convey extracted water to the BOU Treatment Plant; (2) construct the Eastern NHOU Wells and the piping infrastructure necessary to convey extracted water to the BOU Treatment Plant; (3) operate the Eastern NHOU Wells and convey all extracted water to the BOU Treatment Plant; (4) treat all water extracted at the Eastern NHOU Wells to meet the applicable or relevant and appropriate requirements for the NHOU2IR as well as any off-site requirements necessary for the end use ultimately selected by EPA; and (5) provide an end use for all water extracted at the Eastern NHOU Wells.

o. Since November 2017, both extraction wells NHE-7 and NHE-8 have been shut down. The work performed pursuant to the Order is necessary to prevent migration of the contaminant plume in the vicinity of NHE-7 and NHE-8 and protect nearby drinking water production wells.

p. According to the Agency for Toxic Substances and Disease Registry ("ATSDR"), drinking or breathing high levels of TCE may cause nervous system effects, liver and lung damage, abnormal heartbeat, coma, and possibly death. Drinking small amounts of TCE for long periods may cause liver and kidney damage, impaired immune system function, and impaired fetal development in pregnant women. The ATSDR also considers exposure to very high concentrations of PCE to cause dizziness, headaches, sleepiness, confusion, nausea, difficulty in speaking and walking, unconsciousness, and death. The National Institute for Occupational Safety and Health considers PCE a potential carcinogen.

q. The Department of Health and Human Services, the International Agency for Research on Cancer, and EPA have determined that chromium (VI) compounds are known human carcinogens. In workers, inhalation of chromium (VI) has been shown to cause lung cancer.

r. Lockheed Martin Corporation is a Maryland corporation that is the successor to the former owner and operator of an aerospace manufacturing facility previously located in the NHOU and the BOU at approximately 4207 Empire Avenue, 10650 Sherman

Way, 10720 Sherman Way, and 10756 Sherman Way, Burbank, California, from which there have been releases of contaminants such as TCE, PCE, and chromium (VI). These contaminants have impacted or threaten to impact groundwater in the NHO, specifically in the vicinity of wells NHE-7 and NHE-8, and present an imminent and substantial endangerment to the public health or welfare or the environment.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

6. Based on the Findings of Fact set forth above, and the administrative record, EPA has determined that:

a. The site of the former aerospace manufacturing facility described in paragraph 4(r) is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs that EPA will incur at or in connection with the Site.

e. The conditions described in the Findings of Fact above constitute an actual and/or threatened “release” of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

V. PARTIES BOUND

7. This Settlement Agreement shall be binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of Respondent, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent’s responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

VI. PAYMENT OF RESPONSE COSTS

8. Payment for Response Costs.

a. **Payment for Response Costs.** Respondent shall pay to EPA all Response Costs not inconsistent with the NCP incurred by the United States regarding the Order or this Settlement Agreement.

b. **Periodic Bill.** On a periodic basis, EPA will send Respondent a bill requiring payment of all Response Costs incurred by the United States regarding the Order or

this Settlement Agreement that includes a standard cost summary prepared by EPA. Respondent shall make all payments within thirty days after Respondent's receipt of each bill requiring payment, except as otherwise provided in Paragraph 11 (Contesting Response Costs), and in accordance with Paragraphs 8.d and 8.e.

c. **Prepayment of Response Costs.** Within thirty days after the Effective Date, Respondent shall pay to EPA \$50,000 as a prepayment of Response Costs. Respondent shall make payment in accordance with Paragraphs 8.d and 8.e. The total amount paid shall be deposited by EPA in the NHOUS Special Account. These funds shall be retained and used by EPA to conduct or finance future response actions at or in connection with the Site.

d. **Payment Instructions.** Respondent shall make all payments to EPA by one of the below methods:

Fedwire Electronic Funds Transfer (EFT):

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Respondent shall reference Site/Spill ID Number 09N1 and the EPA docket number for this action.

Automated Clearinghouse (ACH):

PNC Bank
808 17th Street, NW
Washington, DC 20074
Contact – Jesse White 301-887-6548
ABA = 051036706
Transaction Code 22 - checking
Environmental Protection Agency
Account 310006
CTX Format

Respondent shall reference Site/Spill ID Number 09N1 and the EPA docket number for this action.

Online Payment:

Respondent shall make payment at <https://www.pay.gov> to the U.S. EPA account in accordance with instructions to be provided to Respondent by EPA.

e. **Notice of Payment.** At the time of payment, Respondent shall send notice that payment has been made to EPA in accordance with Section XIV (Notices and Submissions), and to the EPA Cincinnati Finance Center (CFC) by email or by regular mail at:

EPA CFC by email: cinwd_acctsreceivable@epa.gov

EPA CFC by regular mail: EPA Cincinnati Finance Center
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 09N1 and the EPA docket number for this action.

9. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 8 (Payment for Response Costs) shall be deposited by EPA in the NHOUS Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the NHOUS Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement Agreement or in any other forum.

10. **Interest.** In the event that the payments for Response Costs are not made within thirty days after Respondent's receipt of a written demand requiring payment, or within thirty days of the Effective Date with respect to the prepayment of Response Costs, Respondent shall pay Interest on the unpaid balance. The Interest on Response Costs shall begin to accrue on the date of the written demand and shall continue to accrue until the date of payment with respect to periodic written demands. The Interest on Response Costs for prepayment of Response Costs shall begin on the Effective Date. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to EPA by virtue of Respondent's failure to make timely payments under this Section. Respondent shall make all payments under this Paragraph in accordance with Paragraphs 8.d and 8.e.

11. **Contesting Response Costs.** Respondent may initiate the procedures of Section VIII (Dispute Resolution) regarding payment of any Response Costs billed under Paragraph 8 (Payment for Response Costs) if Respondent determines that EPA has made a mathematical error or included a cost item that is not within the definition of Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the EPA Project Coordinator within thirty days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the thirty-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Response Costs to EPA in the manner described in Paragraph 8, and (b) establish, in

a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation and remit to that escrow account funds equivalent to the amount of the contested Response Costs. Respondent shall send to the EPA Project Coordinator a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, within five days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 8. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 8. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Response Costs.

VII. DISPUTE RESOLUTION

12. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

13. **Informal Dispute Resolution.** If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Response Costs, it shall send EPA a written Notice of Dispute describing the objection(s) within twenty days after such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have thirty days from EPA's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement.

14. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within twenty days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within twenty days thereafter, submit a statement of position. Thereafter, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

15. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement

Agreement, except as provided by Paragraph 11 (Contesting Future Response Costs), as agreed by EPA.

16. Except for the period, if any, beginning on the twenty-first day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 18 (Stipulated Penalty).

VIII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

17. **Interest on Late Payments.** If Respondent fails to make any payment required by Paragraph 8 (Payment for Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

18. **Stipulated Penalty**

a. If any amounts due to EPA under Paragraph 8 (Payment for Response Costs) are not paid by the required date, Respondent shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 17 (Interest on Late Payments), \$2,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty days after the date of demand for payment of the penalties by EPA. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 8 (Payment for Response Costs).

c. At the time of payment, Respondent shall send notice that payment has been made as provided in Paragraph 8.e (Notice of Payment).

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Respondent of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

19. In addition to the Interest and stipulated penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of Respondent's failure to comply with the requirements of this Settlement Agreement, if Respondent fails or refuses to comply with the requirements of this Settlement Agreement, Respondent shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Settlement Agreement, Respondent shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

20. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Payment of stipulated penalties shall not excuse Respondent from payment as required by Section VII (Payment of Response Costs) or from performance of any other requirements of this Settlement Agreement.

IX. COVENANTS BY EPA

21. **Covenants for Respondent by EPA.** Except as specifically provided in Section X (Reservations of Rights by EPA), EPA covenants not to sue or take administrative action against Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Response Costs that Respondent has paid pursuant to Section VI (Payment of Response Costs). These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory performance by Respondent of its obligations under this Settlement Agreement. These covenants extend only to Respondent and do not extend to any other person.

X. RESERVATIONS OF RIGHTS BY EPA

22. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within Paragraph 21 (Covenants for Respondent by EPA). Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to:

- a. liability for failure of Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

23. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, that the United States may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

XI. COVENANTS BY RESPONDENT

24. **Covenants by Respondent.** Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Response Costs and this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims arising out of the response actions at the Site for which the Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of California, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Response Costs.

Provided, however, that nothing in this Settlement Agreement is intended to alter in any way the rights and obligations of the parties under: (1) the Consent Decree entered January 20, 2000 in the U.S. District Court for the Central District of California in *United States v. Lockheed Martin Corporation et al.* (Consolidated Cases No. 91-4527-MRP and No. 97-4214-MRP) (the “2000 Consent Decree”); and (2) the Settlement Agreement entered September 6, 2000, between the United States, acting through the United States Department of Defense, Defense Contract Management Agency, and Lockheed Martin Corporation addressing discontinued operations, including the San Fernando Valley Superfund Sites (the “2000 Settlement Agreement”).

Subject to the 2000 Consent Decree and the 2000 Settlement Agreement, and specifically, without limitation, the terms thereof respecting the avoidance of any double recovery, nothing in this Settlement Agreement shall be construed as a waiver by Respondent of any rights it may have to include costs incurred due to this Settlement Agreement, which have not been paid or reimbursed by the United States pursuant to the 2000 Consent Decree or any other agreement, in any of its proposals of allowable costs for purposes of costing or pricing pursuant to contracts with the United States. Nothing in this Settlement Agreement shall be construed to create or recognize any such right. The incurrence or payment of any costs by the Respondent pursuant to this Settlement Agreement, or inclusion of such costs in Respondent’s proposals for the purpose of costing or pricing of contracts with the United States, does not, in and of itself, render such costs allocable or allowable for Government contracting purposes. For Government contracting purposes, the cost incurred in implementing this Settlement Agreement remain subject to the applicable provisions of (1) the Federal Acquisition Regulation (“FAR”) and Cost Accounting Standards (“CAS”), (2) agency implementing regulations of FAR, (3) the contract(s) between Respondent and the United States pursuant to which such costing or pricing proposals are submitted, and (4) any determination by the cognizant Contracting Officer concerning allocability and allowability of such costs, subject to any right of appeal Respondent may have under the applicable contract(s) or the FAR. Notwithstanding any other provision of this Settlement Agreement, Respondent agrees that it will not claim or include, as allowable costs for the purpose of costing or pricing pursuant to contracts with the United States, any amounts it may pay as Stipulated Penalties pursuant to Paragraph 18 of this Settlement Agreement, and any such stipulated penalties shall be treated by Respondent as unallowable costs.

25. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

26. Waiver of Claims by Respondent

a. Respondent agrees not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that it may have:

(1) **De Micromis Waiver.** For all matters relating to the Site against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

b. Exceptions to Waiver

(1) The waiver under this Paragraph 26 shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against such Settling Party.

(2) The waiver under Paragraph 26.a(1) (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

XII. EFFECT OF SETTLEMENT/CONTRIBUTION

27. Except as provided in Paragraph 26 (Waiver of Claims by Respondent), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Section XII (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2)

and (3) of CERCLA, 42 U.S.C. § 9613 (f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

28. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the payments of Response Costs.

29. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

30. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than sixty days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within ten days after service of the complaint or claim upon it. In addition, Respondent shall notify EPA within ten days after service or receipt of any Motion for Summary Judgment and within ten days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

31. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by EPA set forth in Section IX.

32. Effective upon signature of this Settlement Agreement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent the payment(s) required by Section VII (Payment of Response Costs) and, if any, Section VIII (Failure to Comply with Settlement Agreement) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 28, and that, in any action brought by the United States related to the “matters addressed,” Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this Settlement Agreement effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

XIII. RETENTION OF RECORDS

33. Until ten years after the Effective Date, Respondent shall preserve and retain all non-identical copies of records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") now in its possession or control, or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the liability of any person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

34. After the conclusion of the ten-year record retention period, Respondent shall notify EPA and the State at least ninety days prior to the destruction of any such Records and, upon request by EPA or the State, and except as provided in Paragraph 35 (Privileged and Protected Claims), Respondent shall deliver any such Records to EPA or the State.

35. Privileged and Protected Claims

a. Respondent may assert that all or part of a Record is privileged or protected as provided under federal law, provided Respondent complies with Paragraph 35.b, and except as provided in Paragraph 35.c.

b. If Respondent asserts a claim of privilege or protection, it shall provide EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to EPA in redacted form to mask the privileged or protected information only. Respondent shall retain all Records that it claims to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement Agreement.

36. **Business Confidential Claims.** Respondent may assert that all or part of a Record submitted to EPA under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement Agreement for which Respondent asserts a business confidentiality claim. Records that Respondent claims to be

confidential business information will be accorded the protection specified in 40 C.F.R. Pt. 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Pt. 2, Subpt. B, the public may be given access to such Records without further notice to Respondent.

37. Respondent certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. NOTICES AND SUBMISSIONS

38. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of this Settlement Agreement regarding such Party.

As to EPA:

Michael Massey, Office of the Regional Counsel
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (ORC-3-1)
San Francisco, CA 94105
(415) 972-3034
massey.michael@epa.gov

Kelly Manheimer, Superfund Division
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street (SFD-7-1)
San Francisco, CA 94105
(415) 972-3290
manheimer.kelly@epa.gov

As to Respondent:

Robert S. Phillips
Lockheed Martin Corporation
Remediation Senior Manager
2550 N. Hollywood Way Suite 406

Burbank Ca. 91505
817-807-1727
robert.s.phillips@lmco.com

Beth M. Kramer
Associate General Counsel, Environmental Law
Lockheed Martin Corporation
6801 Rockledge Drive
Bethesda, MD 20817
(301) 897-6402
beth.m.kramer@lmco.com

XV. INTEGRATION/APPENDICES

39. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

- a. Appendix A is the Order.
- b. Appendix B is the NHOU2IR.
- c. Appendix C is the December 18, 2017 letter from EPA to Respondent and the City of Burbank.

XVI. EFFECTIVE DATE

40. This Settlement Agreement shall be effective five days after it is signed by the Assistant Director of the Superfund Division.

IT IS SO AGREED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

7/23/2018
Dated

Lynne M. Keller FOR
Dana Barton
Assistant Director, Superfund Division
U.S EPA, Region IX

Signature Page for Settlement Agreement Regarding the North Hollywood Operable Unit of the
San Fernando Valley (Area 1) Superfund Site

FOR  :
Lockheed Martin Corporation

6/21/18
Dated

CAROL B. CALA
Name

VA, ENERGY, ENVIRONMENT, SAFETY
Title
 & HEALTH